

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF)	FINDINGS OF FACT AND
SOUTH DAKOTA INTRASTATE PIPELINE)	CONCLUSIONS OF LAW;
COMPANY TO RECOVER ADDITIONAL)	NOTICE OF ENTRY OF
COSTS)	ORDER
)	NG00-001

On February 15, 2000, South Dakota Intrastate Pipeline Company (SDIPC), filed an application with the Public Utilities Commission (Commission) seeking an amendment to its rate schedule. According to its application, SDIPC was seeking an amendment to its rate schedule to provide for an increase in its transportation rate charged to its only customer, Montana-Dakota Utilities Company (MDU). In its letter of transmittal, SDIPC proposed to make the change in its rate effective as of April 1, 2000.

On March 1, 2000, MDU filed a Petition to Intervene in this docket. The deadline for intervention was March 3, 2000. At its regularly scheduled March 14, 2000, meeting, the Commission granted MDU's Petition to Intervene.

A hearing was held as scheduled at 1:00 p.m., on November 9, 2000, in Room 464, State Capitol Building, 500 East Capitol, Pierre, South Dakota. The issue at the hearing was whether the Commission should grant SDIPC's request to amend its rate schedule to provide for an increase in its transportation rate charged to its only customer, MDU. Following the hearing, the parties submitted briefs.

At its January 4, 2001, meeting, the Commission considered this matter. The Commission voted unanimously to approve the increase in the transportation rate to \$2.398 per dekatherm (dk) but not to make the rate retroactive.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On February 15, 2000, SDIPC filed an application with the Commission seeking an amendment to its rate schedule. Exhibit 1. According to its application, SDIPC was seeking permission from the Commission to allow SDIPC to increase its transportation rate, charged to its only customer, MDU, from \$2.34 per dk to \$2.4067 per dk pursuant to Paragraph 8.1 of the Transportation Agreement entered into between SDIPC and MDU on March 8, 1993. *Id.* at 1.
2. According to the letter of transmittal, SDIPC proposed to make the change in its rate effective as of April 1, 2000. Exhibit 4. SDIPC did not file any tariff sheets with its petition. See Exhibit 1. SDIPC never implemented the increase in rates. TR. at 23.
3. Pursuant to the Transportation Agreement entered into between SDIPC and MDU, the transportation rate was not to exceed \$2.34 per dk during the first ten years of the contract. Exhibit 5 at 11 (§ 8.1). However, SDIPC was allowed to seek Commission approval of a change in rates "where such change is made necessary by any mandated changes in federal or state taxes. . . . *Id.*

4. At the hearing, MDU and SDIPC agreed that the new transportation rate should be \$2.398 per dk. TR. at 20-21, 30. The increase in the rate was due to an increase in property taxes. TR. at 9. SDIPC's current transportation rate of \$2.34 reflected property taxes in the amount of \$216,000.00. TR. at 9; Exhibit 3. By 1999, SDIPC's property taxes had increased to \$278,968.00. *Id.*

5. SDIPC requested that the increase be effective on April 1, 2000. TR. at 14; Exhibit 4. MDU requested that the increase not be effective until the Commission approves the new rate. TR. at 30. MDU stated it could not recover the increase retroactively through its fuel clause unless the Commission would approve the recovery as retroactive ratemaking. TR. at 35.

6. The witness for Commission Staff, Heather Forney, recommended that the Commission approve a transportation rate that excluded property taxes and then have a separate tax adjustment clause that could be adjusted for the fluctuating property taxes. TR. at 46; Exhibit 6. She recommended an effective date of May 1, 2000. TR. at 46. She believed MDU could recover the increase from its customers if SDIPC were allowed to have its increase effective on May 1, 2000. TR. at 48.

7. SDIPC does not currently have a tax adjustment clause. TR. at 54. SDIPC proposed tax adjustment clause language after the hearing and attached the proposed language to its brief. SDIPC Brief, filed November 28, 2000.

8. The Commission finds that SDIPC filed its proposed increase as an increase in its transportation rate. Exhibits 1, 2. SDIPC never filed any tariff sheets reflecting its proposed increase with an April 1, 2000, effective date and did not seek to implement the proposed increase pending Commission approval. See SDCL 49-34A-12, 49-34A-14 (a utility may put rates into effect after thirty days' notice by filing new schedules, unless the schedule of rates is suspended by the Commission.) The Commission may not retroactively approve the rate back to May 1, 2000. By not filing proposed tariff sheets with an effective date, SDIPC gave up its ability to attempt to place the rates into effect prior to Commission approval. In addition, if SDIPC had intended to file for treatment of its increase in taxes as a tax adjustment clause, it should have filed tariff sheets to that effect in order to put the Commission and the parties on notice that SDIPC was requesting a tax adjustment clause.

9. The Commission approves the transportation rate of \$2.398 per dk. TR. at 20-21, 30. SDIPC may implement the increased rate after the issuance of this order.

CONCLUSIONS OF LAW

1. The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 1-26-17.1, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-10, 49-34A-11, 49-34A-12, 49-34A-13, 49-34A-13.1, 49-34A-14, 49-34A-16, 49-34A-17, 49-34A-19, 49-34A-21, 49-34A-22, and 49-34A-23.

2. The Commission finds that SDIPC filed its proposed increase as an increase in its transportation rate. Exhibits 1, 2. SDIPC never filed any tariff sheets reflecting its proposed increase with an April 1, 2000, effective date and did not seek to implement the proposed increase pending Commission approval. See SDCL 49-34A-12, 49-34A-14 (a utility may put rates into effect after thirty days' notice by filing new schedules, unless the schedule of rates is suspended by the Commission.) The Commission may not retroactively approve the rate back to May 1, 2000. By not filing proposed tariff sheets with an effective date, SDIPC gave up its ability to attempt to place the rates into effect prior to Commission approval. In addition, if SDIPC had intended to file for treatment of its increase in

taxes as a tax adjustment clause, it should have filed tariff sheets to that effect in order to put the Commission and the parties on notice that SDIPC was requesting a tax adjustment clause.

3. The Commission approves the transportation rate of \$2.398 per dk. TR. at 20-21, 30. SDIPC may implement the increased rate after the issuance of this order.

It is therefore

ORDERED, that the transportation rate of \$2.398 per dk is approved and SDIPC may implement the increased rate after the issuance of this order.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 9th day of January, 2001. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 9th day of January, 2001.

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: _____</p> <p>Date: _____</p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

JAMES A. BURG, Chairman

PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner